

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SANDRA A. JOHNSON

Claimant

VS.

HUTCHINSON HOSPITAL CORPORATION

Respondent

Self-Insured

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Docket No. 264,210

ORDER

Claimant appeals the June 13, 2001, preliminary hearing Order of Administrative Law Judge Bruce E. Moore. The Administrative Law Judge denied claimant benefits, finding that claimant had failed to prove personal injury by accident arising out of and in the course of her employment with respondent. The Administrative Law Judge found that claimant gave timely notice of her claimed injury.

ISSUES

Claimant contends that she has proven accidental injury arising out of and in the course of her employment with respondent on the dates alleged. Claimant requests the Order of the Administrative Law Judge be reversed on that finding. Respondent raises the issue of timely notice in its brief, contending that the Administrative Law Judge was wrong in that claimant failed to provide timely notice of her alleged accidental injuries and requests that the Administrative Law Judge be reversed on that point.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant worked as a histologist for respondent for several years. This job required that she create microscopic slices of tissue from surgeries or biopsies, embed them into paraffin and place them in a piece of equipment called a microtome. This activity required that the histologist handle two wheels, one described as 8 inches in diameter and one described as 5 inches in diameter, both of which have handles. The wheels are then rotated simultaneously, with the larger wheel being rotated faster than the smaller wheel. The slices of paraffin are laid in a water bath, picked up on a glass slide and stained. The pathologist later makes a diagnosis from these slides. The speed, direction and number of repetitions of the wheels was never clearly described in the record. Claimant, however, did testify that the activities were repetitive.

Claimant has alleged an accident date beginning in June of 1997 and continuing through December 29, 2000, her alleged last date of work with respondent.

By way of work history, in August 2000, claimant requested a transfer to part-time work as claimant needed to be home with her mother. Respondent complied, and claimant's hours were reduced to four hours per day, working between approximately 3:45 a.m. and 7:45 a.m. This allowed claimant to be home by 8:00 a.m. to assist her mother.

Claimant's history is significant in that she was diagnosed with right side carpal tunnel syndrome in 1988 and received steroid injections for that condition. No work-related claim was made for the carpal tunnel syndrome in 1988.

Claimant also had numerous other health problems and, as a result, underwent yearly examinations. While the history of right side carpal tunnel was always mentioned during these examinations, it did not appear to be an active, ongoing carpal tunnel problem during the years prior to this alleged injury. Claimant's personal treating physician was Jeff L. Thode, M.D. Dr. Thode had been claimant's treating physician since before claimant began her employment with respondent on June 2, 1997.

When claimant was first diagnosed with carpal tunnel syndrome on the right side in 1988, she was treated with cortisone injections, vitamin B6, pain medication and anti-inflammatory medication. She was also given a wrist splint at that time. Medical information in the June 21, 1988, report of William M. Mallonee, M.D., indicated that claimant's carpal tunnel syndrome was worsening.

Claimant did, however, testify that, prior to the increase in symptoms in 2000, she had been asymptomatic for several years.

Claimant ultimately terminated her employment with respondent on December 29, 2000. Before the termination, claimant provided respondent with a termination letter dated December 18, 2000, advising that she was quitting due to "health issues". This letter dated December 18, 2000, indicated her last day worked would be December 29, 2000.

Claimant also provided an exit interview questionnaire on December 29, 2000, which indicated that, when she was asked why she was leaving, she stated "became too painful to do my job, carpal tunnel in both wrists."

In the weeks leading up to claimant's termination, she had several appointments with Dr. Thode. Claimant underwent her yearly examination with Dr. Thode on July 28, 2000. At that time, the history of carpal tunnel syndrome on the right was mentioned, but no ongoing irritation was noted. Claimant was also examined on September 26, 2000, on November 24, 2000, after being thrown from a horse, on November 28, 2000, and on

December 22, 2000. The first mention of ongoing carpal tunnel problems occurred in the December 22, 2000, report, when claimant indicated "can't write, both hands affected." There was no mention in any of the medical reports that claimant's carpal tunnel condition was, in any way, related to her work. Claimant was also examined by Dr. Thode as late as March 28, 2001, for her carpal tunnel condition, with no mention of a work-related involvement.

Dr. Thode did, however, issue a statement titled "Physician's Opinion" dated April 6, 2001, at which time he stated that he felt claimant's injuries were caused or aggravated by claimant's repetitive work activities with respondent. While the form does not specifically discuss carpal tunnel syndrome, it does show that claimant was using braces at night, was undergoing steroid injections and was to avoid repetitive activities or movements with her hands.

Additionally, Dr. Thode authored a letter dated February 7, 2001, advising that Ms. Johnson's bilateral carpal tunnel syndrome was consistent with the type of motions involved in her work. He did specifically identify claimant's job as a histology technician and the fact that she was required to make repetitive hand movements hundreds of times a day.

A note from the March 28, 2001, report indicates that claimant's bilateral carpal tunnel syndrome had worsened, with claimant having more numbness in her hands recently. The worsening of claimant's carpal tunnel condition is noteworthy as claimant last worked for respondent some time prior to her December 29, 2000, exit interview.

Respondent contends claimant's ongoing symptoms are related to outside activities. Claimant worked for her husband performing keyboard data entry for approximately an hour a day, assisting him with his business. This computer work and filing she performed for her husband involved entering hours for his employees. Additionally, claimant owned and cared for three horses which required the daily grooming of the horses.

Certain entries from Dr. Thode's medical reports indicate that, on more than one occasion, claimant suffered injuries while caring for horses. Her medical history indicates she was kicked in the head and trampled by a horse as a teenager, resulting in a concussion. Additionally, on November 28, 2000, claimant was thrown from a horse, suffering a broken rib and several lacerations. And claimant presented herself to Dr. Thode on May 21, 2001, after having severely lacerated her right thumb while attempting to place a horse into a horse trailer.

Claimant contends she advised several of respondent's employees, including her supervisors, of her ongoing carpal tunnel problems. Respondent presented the testimony of Jeannie Heck, the histology clinical coordinator, Adzianna Souba, the assistant director of human resources, and Carl Caton, the administrative director of laboratory services, in

rebuttal. Ms. Heck testified that she knew of claimant's ongoing medical conditions, of which there were many, but was never advised that claimant's carpal tunnel syndrome was acting up or that it was the reason claimant gave for quitting her employment. Ms. Heck acknowledged that claimant had made several complaints regarding ongoing back pain, but did not mention carpal tunnel syndrome.

Ms. Souba, the assistant director of human resources, is responsible for dealing with workers compensation claims. She testified that employees are told at orientation that all work-related claims or injuries must be reported immediately. Whenever a verbal report is made, a variance report is completed, either by the injured individual or by the health nurse. No variance report was ever completed by claimant regarding her alleged carpal tunnel condition. Ms. Souba did go through the exit interview with claimant, but stated during the exit interview claimant never mentioned that her ongoing carpal tunnel problems were work related. She did, however, acknowledge receiving the exit interview form, which discusses the fact that claimant's carpal tunnel syndrome had become too painful for her to do her job. The first notification Ms. Souba had of Dr. Thode's opinion letter was at an unemployment hearing which occurred in March 2001. Ms. Souba testified that claimant, at no time, requested any medical care for her carpal tunnel syndrome nor any type of accommodation prior to her termination.

Mr. Caton was in charge of handling personnel matters in the laboratory. As the administrative director of laboratory services, he would have been claimant's direct supervisor. He also handled the initial orientation of claimant at hire and testified that workers compensation claims and hospital policy associated with those were discussed at that time. He was never advised, while claimant was employed with respondent, that she was having difficulty with her wrists or that her work was aggravating her carpal tunnel condition. The reduction in hours taken in August of 2000 was due to claimant's mother's health problems, not any health problems associated with claimant. He also testified that December 29, 2000, was not claimant's last day. Claimant provided the December 18, 2000, resignation letter, which indicated she would work through December 29. However, claimant only worked approximately a week after the December 18 resignation letter was submitted. The remainder of the time, she called in sick. He testified that he "thought" that she worked either December 24 or December 26 as her last day, but he was uncertain.

In workers compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). The Appeals Board finds, based upon the evidence, that claimant did notify respondent in a timely fashion of her alleged work-related injuries. It is acknowledged that claimant filed her claim for unemployment shortly after her December 29, 2000, termination. An unemployment form dated January 3, 2001, was completed by claimant, indicating that claimant was suffering from carpal tunnel syndrome. Additionally, the exit interview questionnaire clearly states that claimant's carpal tunnel problems in both wrists had become too painful for her to continue doing her job. K.S.A. 44-520 requires notice

of accident, stating the time and place and particulars, within 10 days of the date of accident. The Appeals Board finds both the exit interview form and the unemployment form fell within the 10-day limitation set forth in K.S.A. 44-520. Either or both adequately notified respondent of claimant's alleged carpal tunnel condition and the fact that it was related to her employment activities. The Appeals Board, therefore, finds that claimant provided respondent notice of accident in a timely fashion and the Order of the Administrative Law Judge is affirmed on this issue.

Whether claimant suffered accidental injury arising out of and in the course of her employment is more complicated. Claimant contends that her physical activities at work caused ongoing problems, yet claimant failed to advise anyone with respondent of her allegations until her termination of employment on December 29, 2000. Additionally, the events leading up to claimant's termination show there was significant controversy between claimant and her employer. Several complaints had been lodged against claimant regarding her attitude and her activities while working in the laboratory. Memos from respondent to claimant and from claimant back to respondent show the level of dispute which had arisen at this time. The memos included no information regarding any physical problems claimant may have had while employed with respondent.

Additionally, claimant had several medical examinations with Dr. Thode, her family physician. No mention of her alleged carpal tunnel condition was made until December 22, 2000. That medical report further contains no indication that claimant's carpal tunnel problems are, in any way, related to her employment with respondent. Not until the February 2001 and April 2001 letters from Dr. Thode is there an indication that Dr. Thode felt claimant's physical activities had been causing her carpal tunnel syndrome.

The Administrative Law Judge found claimant had failed in her burden of proving accident arising out of and in the course of her employment notwithstanding Dr. Thode's opinion on causation. Dr. Thode's records appear to be lacking regarding the ongoing physical activities performed by claimant both for her husband and in the care and treatment of her horses. This renders Dr. Thode's causation opinions less reliable.

The Appeals Board finds it significant that claimant's carpal tunnel condition in March 2001, three months after her termination of employment with respondent, rather than improving, had worsened significantly.

Finally, the claimant's allegations depend, in part, on her credibility. The Administrative Law Judge had the opportunity to witness the testimony of claimant, Ms. Heck and Ms. Souba. The Appeals Board has, on many occasions, given some deference to an administrative law judge's opinion regarding the credibility of witnesses when the administrative law judge has had the opportunity to view their witness testimony in person. In this instance, it appears the Administrative Law Judge found claimant's testimony regarding the development or aggravation of claimant's carpal tunnel syndrome

to be less than credible. The Administrative Law Judge noted, in particular, that claimant's carpal tunnel claim did not arise until after the occurrence of the workplace dispute. He also noted that claimant terminated her employment without a request for treatment or accommodation and prior to any treatment recommendations or suggestions from Dr. Thode. Claimant acknowledged that none of the medical reports generated by Dr. Thode were provided to respondent prior to the unemployment hearing in March 2001.

The Appeals Board, therefore, finds that for preliminary hearing purposes claimant has failed to prove that her ongoing carpal tunnel condition arose out of and in the course of her employment with respondent and the Order of the Administrative Law Judge is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated June 13, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 2001.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
Kendall R. Cunningham, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director